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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10 CORY SPENCER, an individual;
11 DIANA MILENA REED, an
12 individual; and COASTAL
13 PROTECTION RANGERS, INC., a
14 California non-profit public benefit
corporation,

15 Plaintiffs,

16 v.

17 LUNADA BAY BOYS; THE
18 INDIVIDUAL MEMBERS OF THE
19 LUNADA BAY BOYS, including but
20 not limited to SANG LEE, BRANT
21 BLAKEMAN, ALAN JOHNSTON
22 AKA JALIAN JOHNSTON,
23 MICHAEL RAE PAPAYANS,
24 ANGELO FERRARA, FRANK
25 FERRARA, CHARLIE FERRARA,
26 and N. F.; CITY OF PALOS
VERDES ESTATES; CHIEF OF
POLICE JEFF KEPLEY, in his
representative capacity; and DOES
1-10,

27 Defendants.
28

CASE NO. 2:16-cv-02129-SJO (RAOx)
STIPULATED PROTECTIVE ORDER

Hon. Rozella A. Oliver

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

1 1. A. PURPOSE AND LIMITATIONS.

2 On December 7, 2016, the Court granted Plaintiff Cory Spencer's
3 Motion to Compel Production of Documents Set 1. Because the Court
4 ordered Mr. Johnston to turn over custody of his cell phone(s) to Plaintiff's
5 attorneys (and all information on the phone(s) for forensic analysis, there are
6 concerns of privacy issues related to data that might be on the phone.
7 Pursuant to the Court's Amended Minute Order on Plaintiff Cory Spencer's
8 Motion to Compel, the parties were directed to meet and confer on a
9 protective order related to the data in the phone (DKT#152). The parties
10 acknowledge that this Order extends only to the data on the phone(s) and
11 limited information or items that are entitled to confidential treatment under
12 the applicable legal principles.

13 B. GOOD CAUSE STATEMENT.

14 The phone(s) may contain information implicating privacy rights of third
15 parties or privileged information such as communications between Mr.
16 Johnston and his attorney or information otherwise protected from disclosure
17 under state or federal statutes, court rules, case decisions, or common law.
18 Accordingly, to expedite the flow of information, to facilitate the prompt
19 resolution of disputes over confidentiality of discovery materials, to
20 adequately protect information the parties are entitled to keep confidential, to
21 ensure that the parties are permitted reasonable necessary uses of such
22 material in preparation for and in the conduct of trial, to address their
23 handling at the end of the litigation, and serve the ends of justice, a
24 protective order for such information is justified in this matter. It is the intent
25 of the parties that information will not be designated as confidential for
26 tactical reasons and that nothing be so designated without a good faith belief
27 that it has been maintained in a confidential, non-public manner, and there is
28 good cause why it should not be part of the public record of this case.

1 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
2 SEAL.

3 The parties further acknowledge, as set forth in Section 12.3, below,
4 that this Stipulated Protective Order does not entitle them to file confidential
5 information under seal; Local Civil Rule 79-5 sets forth the procedures that
6 must be followed and the standards that will be applied when a party seeks
7 permission from the court to file material under seal.

8 There is a strong presumption that the public has a right of access to
9 judicial proceedings and records in civil cases. In connection with non-
10 dispositive motions, good cause must be shown to support a filing under
11 seal. See Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1176
12 (9th Cir. 2006), Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th
13 Cir. 2002), Makar-Welbon v. Sony Electronics, Inc., 187 F.R.D. 576, 577 (E.D.
14 Wis. 1999) (even stipulated protective orders require good cause showing),
15 and a specific showing of good cause or compelling reasons with proper
16 evidentiary support and legal justification, must be made with respect to
17 Protected Material that a party seeks to file under seal. The parties' mere
18 designation of Disclosure or Discovery Material as CONFIDENTIAL does
19 not—without the submission of competent evidence by declaration,
20 establishing that the material sought to be filed under seal qualifies as
21 confidential, privileged, or otherwise protectable—constitute good cause.

22 Further, if a party requests sealing related to a dispositive motion or
23 trial, then compelling reasons, not only good cause, for the sealing must be
24 shown, and the relief sought shall be narrowly tailored to serve the specific
25 interest to be protected. See Pintos v. Pacific Creditors Ass'n, 605 F.3d
26 665, 677-79 (9th Cir. 2010). For each item or type of information, document,
27 or thing sought to be filed or introduced under seal in connection with a
28 dispositive motion or trial, the party seeking protection must articulate

1 compelling reasons, supported by specific facts and legal justification, for the
2 requested sealing order. Again, competent evidence supporting the
3 application to file documents under seal must be provided by declaration.

4 2. DEFINITIONS.

5 2.1 Action: *Cory Spencer, et al. vs. Lunada Bay Boys, et al.*, Case No.
6 2:16-cv-02129-SJO (RAOx).

7 2.2 Challenging Party: a Party or Non-Party that challenges the
8 designation of information or items under this Order.

9 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
10 how it is generated, stored or maintained) or tangible things that qualify for
11 protection under Federal Rule of Civil Procedure 26(c), and as specified
12 above in the Good Cause Statement.

13 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
14 their support staff).

15 2.5 Designating Party: a Party or Non-Party that designates information
16 or items that it produces in disclosures or in responses to discovery as
17 "CONFIDENTIAL."

18 2.6 Disclosure or Discovery Material: all items or information,
19 regardless of the medium or manner in which it is generated, stored, or
20 maintained (including, among other things, testimony, transcripts, and
21 tangible things), that are produced or generated in disclosures or responses
22 to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a
24 matter pertinent to the litigation who has been retained by a Party or its
25 counsel to serve as an expert witness or as a consultant in this Action.

26 2.8 House Counsel: attorneys who are employees of a party to this
27 Action. House Counsel does not include Outside Counsel of Record or any
28 other outside counsel.

1 2.9 Non-Party: any natural person, partnership, corporation,
2 association or other legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of
4 a party to this Action but are retained to represent or advise a party to this
5 Action and have appeared in this Action on behalf of that party or are
6 affiliated with a law firm that has appeared on behalf of that party, and
7 includes support staff.

8 2.11 Party: any party to this Action, including all of its officers,
9 directors, employees, consultants, retained experts, and Outside Counsel of
10 Record (and their support staffs).

11 2.12 Producing Party: a Party or Non-Party that produces Disclosure
12 or Discovery Material in this Action.

13 2.13 Professional Vendors: persons or entities that provide litigation
14 support services (e.g., photocopying, videotaping, translating, preparing
15 exhibits or demonstrations, and organizing, storing, or retrieving data in any
16 form or medium) and their employees and subcontractors.

17 2.14 Protected Material: any Disclosure or Discovery Material that is
18 designated as "CONFIDENTIAL."

19 2.15 Receiving Party: a Party that receives Disclosure or Discovery
20 Material from a Producing Party.

21 3. SCOPE.

22 The protections conferred by this Stipulation and Order cover not only
23 Protected Material (as defined above), but also (1) any information copied or
24 extracted from Protected Material; (2) all copies, excerpts, summaries, or
25 compilations of Protected Material; and (3) any testimony, conversations, or
26 presentations by Parties or their Counsel that might reveal Protected
27 Material.

28 Any use of Protected Material at trial shall be governed by the orders

1 of the trial judge. This Order does not govern the use of Protected Material
2 at trial.

3 4. DURATION.

4 Once a case proceeds to trial, information that was designated as
5 CONFIDENTIAL or maintained pursuant to this protective order used or
6 introduced as an exhibit at trial becomes public and will be presumptively
7 available to all members of the public, including the press, unless compelling
8 reasons supported by specific factual findings to proceed otherwise are
9 made to the trial judge in advance of the trial. See Kamakana, 447 F.3d at
10 1180-81 (distinguishing “good cause” showing for sealing documents
11 produced in discovery from “compelling reasons” standard when merits-
12 related documents are part of court record). Accordingly, the terms of this
13 protective order do not extend beyond the commencement of the trial

14 5. DESIGNATING PROTECTED MATERIAL.

15 5.1 Exercise of Restraint and Care in Designating Material for
16 Protection. Each Party or Non-Party that designates information or items for
17 protection under this Order must take care to limit any such designation to
18 specific material that qualifies under the appropriate standards. The
19 Designating Party must designate for protection only those parts of material,
20 documents, items or oral or written communications that qualify so that other
21 portions of the material, documents, items or communications for which
22 protection is not warranted are not swept unjustifiably within the ambit of this
23 Order.

24 Mass, indiscriminate or routinized designations are prohibited.
25 Designations that are shown to be clearly unjustified or that have been made
26 for an improper purpose (e.g., to unnecessarily encumber the case
27 development process or to impose unnecessary expenses and burdens on
28 other parties) may expose the Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items
2 that it designated for protection do not qualify for protection, that Designating
3 Party must promptly notify all other Parties that it is withdrawing the
4 inapplicable designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided
6 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
7 otherwise stipulated or ordered, Disclosure or Discovery Material that
8 qualifies for protection under this Order must be clearly so designated before
9 the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic
12 documents, but excluding transcripts of depositions or other pretrial or trial
13 proceedings), that the Producing Party affix at a minimum, the legend
14 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
15 contains protected material. If only a portion of the material on a page
16 qualifies for protection, the Producing Party also must clearly identify the
17 protected portion(s) (e.g., by making appropriate markings in the margins).

18 A Party or Non-Party that makes original documents available for
19 inspection need not designate them for protection until after the inspecting
20 Party has indicated which documents it would like copied and produced.
21 During the inspection and before the designation, all of the material made
22 available for inspection shall be deemed "CONFIDENTIAL." After the
23 inspecting Party has identified the documents it wants copied and produced,
24 the Producing Party must determine which documents, or portions thereof,
25 qualify for protection under this Order. Then, before producing the specified
26 documents, the Producing Party must affix the "CONFIDENTIAL legend" to
27 each page that contains Protected Material. If only a portion of the material
28 on a page qualifies for protection, the Producing Party also must clearly

1 identify the protected portion(s) (e.g., by making appropriate markings in the
2 margins).

3 (b) for testimony given in depositions that the Designating Party
4 identifies the Disclosure or Discovery Material on the record, before the
5 close of the deposition all protected testimony.

6 (c) for information produced in some form other than documentary and
7 for any other tangible items, that the Producing Party affix in a prominent
8 place on the exterior of the container or containers in which the information
9 is stored the legend "CONFIDENTIAL." If only a portion or portions of the
10 information warrants protection, the Producing Party, to the extent
11 practicable, shall identify the protected portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an
13 inadvertent failure to designate qualified information or items does not,
14 standing alone, waive the Designating Party's right to secure protection
15 under this Order for such material. Upon timely correction of a designation,
16 the Receiving Party must make reasonable efforts to assure that the
17 material is treated in accordance with the provisions of this Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
20 designation of confidentiality at any time that is consistent with the Court's
21 Scheduling Order.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process under Local Rule 37.1 et seq.

24 6.3 The burden of persuasion in any such challenge proceeding shall be
25 on the Designating Party. Frivolous challenges, and those made for an
26 improper purpose (e.g., to harass or impose unnecessary expenses and
27 burdens on other parties) may expose the Challenging Party to sanctions.
28 Unless the Designating Party has waived or withdrawn the confidentiality

1 designation, all parties shall continue to afford the material in question the
2 level of protection to which it is entitled under the Producing Party's
3 designation until the Court rules on the challenge.

4 **7. ACCESS TO AND USE OF PROTECTED MATERIAL.**

5 **7.1 Basic Principles.** A Receiving Party may use Protected Material that
6 is disclosed or produced by another Party or by a Non-Party in connection
7 with this Action only for prosecuting, defending or attempting to settle this
8 Action. Such Protected Material may be disclosed only to the categories of
9 persons and under the conditions described in this Order. When the Action
10 has been terminated, a Receiving Party must comply with the provisions of
11 section 13 below (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party
13 at a location and in a secure manner that ensures that access is limited to
14 the persons authorized under this Order.

15 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless
16 otherwise ordered by the court or permitted in writing by the Designating
17 Party, a Receiving Party may disclose any information or item designated
18 "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this Action, as
20 well as employees of said Outside Counsel of Record to whom it is
21 reasonably necessary to disclose the information for this Action;

22 (b) the officers, directors, and employees (including House Counsel) of
23 the Receiving Party to whom disclosure is reasonably necessary for this
24 Action;

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this Action and who have signed the
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (d) the court and its personnel;

1 (e) court reporters and their staff;

2 (f) professional jury or trial consultants, mock jurors, and

3 Professional Vendors to whom disclosure is reasonably necessary for this
4 Action and who have signed the "Acknowledgment and Agreement to Be
5 Bound" (Exhibit A);

6 (g) the author or recipient of a document containing the information or
7 a custodian or other person who otherwise possessed or knew the
8 information;

9 (h) during their depositions, witnesses, and attorneys for witnesses, in
10 the Action to whom disclosure is reasonably necessary provided: (1) the
11 deposing party requests that the witness sign the form attached as Exhibit 1
12 hereto; and (2) they will not be permitted to keep any confidential information
13 unless they sign the "Acknowledgment and Agreement to Be Bound" (Exhibit
14 A), unless otherwise agreed by the Designating Party or ordered by the
15 court. Pages of transcribed deposition testimony or exhibits to depositions
16 that reveal Protected Material may be separately bound by the court reporter
17 and may not be disclosed to anyone except as permitted under this
18 Stipulated Protective Order; and

19 (i) any mediator or settlement officer, and their supporting personnel,
20 mutually agreed upon by any of the parties engaged in settlement
21 discussions.

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
23 IN OTHER LITIGATION.

24 If a Party is served with a subpoena or a court order issued in other
25 litigation that compels disclosure of any information or items designated in
26 this Action as "CONFIDENTIAL," that Party must:

27 (a) promptly notify in writing the Designating Party. Such notification
28 shall include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or
2 order to issue in the other litigation that some or all of the material covered
3 by the subpoena or order is subject to this Protective Order. Such
4 notification shall include a copy of this Stipulated Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be
6 pursued by the Designating Party whose Protected Material may be
7 affected.

8 If the Designating Party timely seeks a protective order, the Party
9 served with the subpoena or court order shall not produce any information
10 designated in this action as "CONFIDENTIAL" before a determination by the
11 court from which the subpoena or order issued, unless the Party has
12 obtained the Designating Party's permission. The Designating Party shall
13 bear the burden and expense of seeking protection in that court of its
14 confidential material and nothing in these provisions should be construed as
15 authorizing or encouraging a Receiving Party in this Action to disobey a
16 lawful directive from another court.

17 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
18 PRODUCED IN THIS LITIGATION.

19 The terms of this Order are applicable to information produced by a
20 Non-Party in this Action and designated as "CONFIDENTIAL." Such
21 information produced by Non-Parties in connection with this litigation is
22 protected by the remedies and relief provided by this Order. Nothing in
23 these provisions should be construed as prohibiting a Non-Party from
24 seeking additional protections.

25 In the event that a Party is required, by a valid discovery request, to
26 produce a Non-Party's confidential information in its possession, and the
27 Party is subject to an agreement with the Non-Party not to produce the Non-
28 Party's confidential information, then the Party shall:

1 (1) promptly notify in writing the Requesting Party and the Non-Party
2 that some or all of the information requested is subject to a confidentiality
3 agreement with a Non-Party;

4 (2) promptly provide the Non-Party with a copy of the Stipulated
5 Protective Order in this Action, the relevant discovery request(s), and a
6 reasonably specific description of the information requested; and

7 (3) make the information requested available for inspection by the
8 Non-Party, if requested.

9 If the Non-Party fails to seek a protective order from this court within 14
10 days of receiving the notice and accompanying information, the Receiving
11 Party may produce the Non-Party's confidential information responsive to
12 the discovery request. If the Non-Party timely seeks a protective order, the
13 Receiving Party shall not produce any information in its possession or
14 control that is subject to the confidentiality agreement with the Non-Party
15 before a determination by the court. Absent a court order to the contrary,
16 the Non-Party shall bear the burden and expense of seeking protection in
17 this court of its Protected Material.

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

19 If a Receiving Party learns that, by inadvertence or otherwise, it has
20 disclosed Protected Material to any person or in any circumstance not
21 authorized under this Stipulated Protective Order, the Receiving Party must
22 immediately (a) notify in writing the Designating Party of the unauthorized
23 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
24 Protected Material, (c) inform the person or persons to whom unauthorized
25 disclosures were made of all the terms of this Order, and (d) request such
26 person or persons to execute the "Acknowledgment and Agreement to Be
27 Bound" that is attached hereto as Exhibit A.

28 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE

1 PROTECTED MATERIAL.

2 When a Producing Party gives notice to Receiving Parties that certain
3 inadvertently produced material is subject to a claim of privilege or other
4 protection, the obligations of the Receiving Parties are those set forth in
5 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended
6 to modify whatever procedure may be established in an e-discovery order
7 that provides for production without prior privilege review. Pursuant to
8 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
9 agreement on the effect of disclosure of a communication or information
10 covered by the attorney-client privilege or work product protection, the
11 parties may incorporate their agreement in the stipulated protective order
12 submitted to the court.

13 12. MISCELLANEOUS.

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of
15 any person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order, no Party waives any right it otherwise would have to object
18 to disclosing or producing any information or item on any ground not
19 addressed in this Stipulated Protective Order. Similarly, no Party waives
20 any right to object on any ground to use in evidence of any of the material
21 covered by this Protective Order.

22 12.3 Filing Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Local Civil Rule 79-5. Protected
24 Material may only be filed under seal pursuant to a court order authorizing
25 the sealing of the specific Protected Material at issue. If a Party's request to
26 file Protected Material under seal is denied by the court, then the Receiving
27 Party may file the information in the public record unless otherwise
28 instructed by the court.

1 13. FINAL DISPOSITION.

2 After the final disposition of this Action, as defined in paragraph 4, within
3 60 days of a written request by the Designating Party, each Receiving Party
4 must return all Protected Material to the Producing Party or destroy such
5 material. As used in this subdivision, "all Protected Material" includes all
6 copies, abstracts, compilations, summaries, and any other format
7 reproducing or capturing any of the Protected Material. Whether the
8 Protected Material is returned or destroyed, the Receiving Party must submit
9 a written certification to the Producing Party (and, if not the same person or
10 entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
11 category, where appropriate) all the Protected Material that was returned or
12 destroyed and (2) affirms that the Receiving Party has not retained any
13 copies, abstracts, compilations, summaries or any other format reproducing
14 or capturing any of the Protected Material. Notwithstanding this provision,
15 Counsel are entitled to retain an archival copy of all pleadings, motion
16 papers, trial, deposition, and hearing transcripts, legal memoranda,
17 correspondence, deposition and trial exhibits, expert reports, attorney work
18 product, and consultant and expert work product, even if such materials
19 contain Protected Material. Any such archival copies that contain or
20 constitute Protected Material remain subject to this Protective Order as set
21 forth in Section 4 (DURATION).

22 14. VIOLATION.

23 Any violation of this Order may be punished by appropriate measures
24 including, without limitation, contempt proceedings and/or monetary
25 sanctions.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3 DATED: December 9, 2016 OTTEN LAW, PC

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By: /s/ Victor Otten

7

VICTOR OTTEN

8

KAVITA TEKCHANDANI

9

Attorneys for Plaintiffs

10

CORY SPENCER, DIANA MILENA

11

REED, and COASTAL PROTECTION
RANGERS, INC.

12

13 DATED: December 9, 2016

LAW OFFICES OF J. PATRICK
CAREY

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Bv: /s/ J. Patrick Carey

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J. PATRICK CAREY

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Attorneys for Defendant

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ALAN JOHNSTON

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

21

DATED: December 12, 2016

Rozella A. Oliver

22

HON. ROZELLA A. OLIVER

23

United States Magistrate Judge

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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the
Central District of California on [date] in the case of _____ [insert
formal name of the case and the number and initials assigned to it by the
court]. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to
so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.
I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____
[print or type full name] of

_____ [print or type full address
and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____